

BULLET BACKGROUND PAPER
ON
PERSONAL/NONPERSONAL SERVICES CONTRACTING

SUBJECT: Federal agencies are generally required to rely on the private sector for commercial services, but are not to award contracts for inherently governmental functions. Nonpersonal services contracts are proper under the agency's general contracting authority, but an agency may not award a personal services contract unless specifically authorized by statute to do so. It behooves us, therefore, to draft contracts for services that are clearly nonpersonal services ones.

DISCUSSION:

- ° Service contracts engage the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than furnish an end item of supply.
- ° Nonpersonal services contracts are ones under which the personnel rendering the services are not subject either by the contract's terms or by the manner of their administration, to the supervision and control usually prevailing in relationships between the Government and its employees.
- ° On the other hand, personal services contracts are ones which by their express terms or as administered, make the contractor personnel appear in effect, Government employees.
 - °° "Employer-employee" relationship created.
 - °° Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws.
 - °°° Obtaining personal services by contract, rather than by direct hire, circumvents these laws unless Congress has specifically authorized acquisition of the services by contract.
- ° Relatively continuous supervision and control by a Government officer/employee is fatal, but giving an order for a specific article/service with the right to reject the finished product/result, is not the type of supervision/control that converts independent contractor/contractor employee into a Government employee.